

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL REVISION APPLICATION No. 299 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

LAXMANBHAI K.MAKWANA
Versus
EXECUTIVE ENGINEER

=====

Appearance :

MR MM SAIYED for the petitioner

MR GM AMIN for the respondent

=====

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/12/2005

ORAL JUDGMENT

1. Rule. Mr.G.M.Amin, the learned advocate waives service of rule on behalf of the respondent.

2. The present Civil Revision Application is filed by the original defendant being aggrieved of an order passed below Exh.24 in Regular Civil Suit No.1591 of 1999.

The opponent herein - original plaintiff - the Executive Engineer, GWRDC (Gujarat Water Resources Development Corporation) filed the suit for recovery of damages for the alleged breach of a contract. The petitioner herein - the original defendant filed Exh.24 application inter alia contending that the contract was entered between the parties in the year 1993, but then the contract was not completed in stipulated time hence, the department had to serve a notice in the year 1994, asking the party to complete the work at the earliest. However, as the party could not complete the work, the contract was terminated on 01.06.1995 and that was communicated to the petitioner on 13.06.1995.

It is further contended by the petitioner - original defendant that the work of the said contract was then assigned to one G.R.Patel - Contractor, who completed the work on 30.04.1996. But then for the reasons best known to the plaintiff, it was only on 22.10.1997 that the suit was filed. It is vehemently urged by the learned advocate for the petitioner that the suit was time barred hence,

Exh.24 application was filed praying to frame preliminary issue about limitation and deciding the same, so as to see that evitable hardships to the defendant of undergoing the full fledged trial can be avoided. That application is rejected by a non-speaking order dated 07.05.2005 which reads as under:

"Heard the advocate for both the side perused the pleadings and documents produced before the Court.

Looking to the cause of action of this case it is required to be evidence, so to decide this question hence issue to limitation is mixed question of law and fact. So, this application is not liable to granted hence I passed the following order."

3. The learned advocate for the petitioner submitted that even on mere perusal of the plaint, the Court could have ascertained that the suit was time barred. When a question of suit being time barred is raised, it becomes significant because answer to this question decides the 'jurisdiction' of the Court. If a suit is not filed within period of limitation, the Court has no jurisdiction to try the same. In this regard, the learned advocate relied upon a decision of a the Hon'ble the Apex Court in the case of **PANDURANG DHONDI CHOUGULE AND OTHERS**

VS. MARUTI HARI JADHAV AND OTHERS, reported in AIR 1966 SC 153. The learned advocate invited the attention of the Court to the observations made by the Hon'ble the Apex Court in paragraph No.10, relevant part thereof reads as under:

"10 It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the Court, and so, an erroneous decision on these pleas can be said to be concerned with questions of S. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate Court which has no relation to questions of jurisdiction of that Court, cannot be corrected by the High Court under S. 115."

4. Mr.G.M.Amin, the learned advocate for the respondent herein - original plaintiff opposed this Civil Revision Application mainly on three grounds, (1) that the revision application is not maintainable in view of the amendment of Section 115 of the Civil Procedure Code. He submitted that addition of proviso after clause (a), (b) and (c) of Sub-section 1 of Section 115, has rendered the present Civil Revision Application not maintainable.

He submitted that on merits, the present petitioner has no case inasmuch as after the contract was terminated in the year 1995, the work was awarded to another contractor - Mr.G.R.Patel and on completion of the work, a notice was given to the present defendant in the year 1998 and amount of damages was demanded which is not paid by the petitioner - original defendant hence, the suit was filed. Mr.Amin submitted that unless the damages were quantified, the plaintiff could not have filed a suit for damages. Mr.Amin further submitted that the present Civil Revision Application is also required to be dismissed on the ground of suppression of material fact. He submitted that against the order passed below Exh.18 in Regular Civil Suit No.1591 of 1999 against this very party, by which the suit is dismissed treating the same to be barred by limitation, a First Appeal is filed in the Court of District Judge and the same is pending. He submitted that this fact is willfully suppressed by the present petitioner - original defendant.

5. The learned advocate appearing for the petitioner - original defendant submitted that his client is still not served with the process of the First Appeal filed in the Court of District Judge and hence, he did not have any knowledge of the First Appeal and, therefore, there is no

question of suppressing that information.

He further submitted that so far as on merits the case is concerned, it is not from the date when the notice is served to a party for the quantified damages, that the period of limitation starts. He submitted that the period of limitation starts when the contract is terminated and, therefore, the plaintiff has no case even on merits.

So far as maintainability of the revision is concerned, the learned advocate for the petitioner submitted that as the Hon'ble the Apex Court has held in the case of PANDURANG DHONDI CHOUGULE AND OTHERS (Supra) that a question of limitation will decide the jurisdiction of the Court, the present Civil Revision Application is maintainable.

6. After the learned advocates were heard as aforesaid, they arrived at a consensus that interest of justice would be served if the revision application is allowed to a limited extend by directing the Court below to frame a preliminary issue on the point of limitation and decide the same.

The learned advocates for the parties requested that the learned Judge be directed to decide the issue of limitation after giving full opportunity to the parties to lead necessary evidence in support of their case.

On this consensus being arrived at, this court does not go into the merits of the matter and disposes of the revision with the following direction:

The Court below, i.e. Civil Judge (S.D.), Vadodara is directed to raise a preliminary issue in Regular Civil Suit No.1591 of 1999 as was prayed for by Exh.24 and decide the same within 6 months from the date of the receipt of this order, after giving full opportunity to both the sides to lead necessary evidence.

7. With this direction, the Civil Revision Application is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(RAVI R. TRIPATHI, J.)

*Shitole

